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内 幕 交 易 及 其 民 事 责 任

Insider Trading and Its Civil Liability

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## 内 容 摘 要

完善和发展我国证券市场,需要进一步加强对内幕交易行为的控制和防范。由于立法上的不完善以及内幕交易情况的多样性与隐蔽性,内幕交易的民事责任案的审理始终充满争论。本文从内幕交易的概念入手,研究内幕交易行为样态的范围,分析利用、泄露、建议、短线交易四种内幕交易行为类型的特点,就内幕信息的界定以及内幕交易主体的认定、民事责任的承担及面临的问题进行探讨分析,进而对内幕交易及其民事责任提出相关的立法完善建议。

基于上述构想,论文主体分为五章:

第一章 内幕交易的获取手段及利用方式。介绍内幕交易信息获得的基本途径及其内幕交易的基本手段,为案件的分析讨论提供必要的基本理论背景资料。

第二章 证券内幕交易行为的市场危害。全面揭示证券市场内幕交易对资本市场、个体利益、资源配置、国家金融体系的市场危害,力图具体说明我国证券市场内幕交易行为产生不良影响的深度、广度。

第三章 内幕交易民事责任的承担。从内幕交易民事责任主体的确定、原告主体资格的认定、损害因果关系的确定、损害赔偿的方式和计算等方面进行细致的梳理和剖析,阐明民事责任承担的相关问题。

第四章 追究内幕交易民事责任存在的问题。从多方面分析内幕交易民事责任面临的问题,揭示我国内幕交易民事责任的立法不足之处。

第五章 对我国内幕交易的立法完善建议。寻求和发扬我国已有的积极因素,有的放矢地提出具体的对策与立法建议,以资完善我国的证券市场法治。

**关键词:** 内幕交易;民事责任;立法完善

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## ABSTRACT

To improve and develop securities business in china, it is needed to further strengthen the control of insider trading practices and prevention. Due to the imperfection in legislation, as well as insider trading on diversity and invisibility, civil liability for insider trading trial of the case has always been surrounded by controversies. In this paper, the concept of insider trading to start is in order to analyze four types of characteristics of the use, disclosure, advice, short-term trading in insider trading behavior. It is probe into the definition of insider information and insider trading of the main identification, civil commitment and problems of civil liability. So that, some comprehensive proposal for insider trading was put forward relevant legislation.

Based on the above ideas, the main thesis is divided into five chapters:

The first chapter: the form of insider trading securities and its latest development of specific forms. The first chapter describes the basic way to get insider trading information and the basic means of insider trading, providing the necessary background information and the basic theory for the article analyzed and discussed.

The second chapter: the harm of securities and insider trading behavior of market. Fully reveal the harm of insider trading to the stock market insider trading on capital markets, individual interests, resource allocation, the country's financial system, and try to describe the specific behavior of China's stock market insider trading adversely affecting in the depth, breadth.

The third chapter: the insider trading civil commitment. To clarify the issues related to civil commitment, sort out and analyze the main body of Civil liability in insider trading, the main qualification of the plaintiff, the determination of injury causation and the damages in detail .

The fourth chapter: the problems of civil liability in insider trading. Analyze the problem of civil liability in insider trading in 5 sides, and reveals the deficiencies in

insider trading legislation on Civil Liability in china.

The fifth chapter: comprehensive proposal on China's insider trading legislation. to improve China's securities market in the rule of law, seek and develop our existing positive factors and put forward some legislative proposals.

**Keywords:** Insider Trading; Civil Liability; Legislation Improvement.

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## 前 言

内幕交易民事责任主要是指由于内幕交易而给一般投资者及上市公司造成财产损失，内幕交易者所应承担的赔偿责任。内幕交易民事责任的关键在于民事责任的追究，内幕交易民事责任的追究，是规范证券市场行为、防范证券风险不可或缺的重要法律手段之一，可以以补偿、赔偿损失等手段，还可以通过追究财产责任的方式，达到惩戒和内幕交易者的目的。当前，我国《证券法》作为规范证券市场的基本法律，对内幕交易的民事责任却未明确规定，使得内幕交易受害人只能依据《民法通则》的有关规定寻求救济，即只能依靠普通民法或民事责任理论来寻求帮助。由于在非面对面的证券交易中，很难确定谁是受害人以及其所受到的损失，也很难确定行为与损害之间的因果关系，受害人依据《民法通则》实际上很难得到赔偿。因此，我们必须加强对内幕交易民事责任的研究，建立和完善我国内幕交易民事责任制度，成为当前的一个重要课题。



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